BRITISH COLUMBIA

DOCKET	
11-RPS-01	
DATE	MAR 16 2012
RECD.	MAR 16 2012

March 16, 2012

MEM 65379

Mr. Brian McCollough
Renewables Portfolio Standard Unit
Renewable Energy Office
California Energy Commission

Email: bmccollo@energy.ca.gov

pc: docket@energy.ca.gov
RPS33@energy.ca.gov
ecapello@aspeneg.com

Re: Docket #11-RPS-01, Eligibility of British Columbia Run-of-River Projects under California's Renewable Portfolio Standard

Dear Mr. McCollough:

The purpose of this letter is to respond to inaccurate statements made about the Province of British Columbia's environmental standards and permitting processes at the staff workshop on British Columbia Run-of-River (ROR) projects held February 24, 2012.

This response includes information gathered from all relevant provincial regulatory agencies. The goal is to clarify the Province of British Columbia's permitting and environmental standards for ROR projects. It is my hope that these clarifications will be useful to the California Energy Commission (CEC) as it considers whether British Columbia ROR generation should be considered "renewable" under California's Renewable Portfolio Standard (RPS).

I will address the issues in roughly the chronological order in which they were presented during the webinar.

Comments on Fish and Fish Habitat Impacts

Potential impacts on fish and fish habitat are regulated provincially through the *Fish Protection Act* (http://www.env.gov.bc.ca/habitat/fish_protection_act/act/documents/act-theact.html). They are regulated federally through both the *Fisheries Act* (http://laws-lois.justice.gc.ca/eng/acts/F-14/) and the *Species at Risk Act* (http://laws-lois.justice.gc.ca/eng/acts/S-15.3/).

.../2

The federal Department of Fisheries and Oceans' (DFO) "Proponent's Guide to Information Requirements for Review Under the Fish Habitat Protection Provisions of the *Fisheries Act*" (Guide), outlines what is required to ensure adequate protection of fish and fish habitat. The Guide helps DFO determine whether proposed measures to reduce potential impacts are sufficient to meet the requirements of the *Fisheries Act*, whether additional measures are necessary, or whether an authorization is required when impacts are considered unavoidable, but acceptable. A copy of this Guide can be accessed at http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/requirements-exigences/index-eng.asp#c9.

Comments on the Kokish River Hydroelectric Project

Several comments were made about the proposed 45 megawatt (MW) Kokish River Hydroelectric Project (Kokish project). I would like to take this opportunity to provide you with some additional background information.

While the proposed Kokish project is below the 50 MW threshold that automatically triggers the provincial environmental assessment (EA) process, the proponent opted for a provincial EA review because the Kokish River supports several species of anadromous salmonids. Protection of high value anadromous fish species is of critical concern for provincial and federal agencies, the public, and First Nations.

Fish impact concerns prompted the proponent to suspend the EA process for eight months. The proponent then undertook extensive project redesign to respond to the concerns raised by stakeholders, including altering the proposed in-stream flow regime. An EA Certificate was issued for the redesigned project. The proponent's EA Certificate includes several ongoing mitigation measures and compliance tests to ensure impacts on fish and fish habitat are kept to a minimum. The mitigation measures are legally binding.

The provincial Environmental Assessment Office (EAO) and the federal Canadian Environmental Assessment Agency conducted a coordinated review of the Kokish project. However, provincial and federal decisions are separate. I understand that DFO officials are currently completing the federal decision document and related federal authorizations for the Kokish Project. Further, both the provincial and federal governments discharged their respective legal duties to consult and accommodate First Nations that could be potentially affected by the Kokish project. This included the 'Namgis First Nation.

Extensive information on the Kokish EA is available publicly. The EAO Assessment Report that documents review findings, mitigation and compensation measures can be found at http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_project_home_332.html.

Comments on Monitoring and Enforcement

Part of the EAO's mandate is to verify that EA certified projects are carried out in compliance with the requirements stipulated in EA Certificates. During the last couple of years, the EAO

.../3

has been enhancing its compliance management program to better fulfill this part of its mandate. This work has recently been expanded and further focused in response to an audit report published by the Auditor General of British Columbia in July 2011 on the EAO's oversight of certified projects. I understand that the EAO has acted quickly on the recommendations of the audit report to enhance its compliance management program. This includes building partnerships with other government regulatory agencies to improve communications, build on existing information systems, and identify more cohesive methods to monitor and track project environmental certificate conditions (e.g., project progress permitting, compliance and enforcement, etc.).

I also understand some webinar participants claimed that environmental standards were not being enforced adequately due to resource constraints at the provincial Ministry of Environment (MOE). This statement was misleading as the *Water Act* requires an Independent Environmental Monitor and Independent Engineer who provides reports to the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) on a regular schedule during construction. FLNRO is the provincial ministry responsible for the *Water Act*. Further, FLNRO compliance and enforcement staff inspect ROR projects. MOE conservation officers are only used for specific aspects of these inspections. In fact, the number of provincial compliance and enforcement specialists conducting inspections has increased since FLNRO was created in fall 2010. Clean energy projects are a priority for such inspections.

Comments on Local Government Objections to "Bill 30"

In 2006, the Province introduced "Bill 30" - a *Miscellaneous Statutes Amendment Act* - which amended section 121 of the *Utilities Commission Act* clarifying the roles of provincial and local governments concerning regulation of public utilities. Section 121 was originally created in 1957 and had not been updated since that time. The amendment clarified that local government land use decisions (e.g. local zoning) cannot prevent public utilities from constructing a ROR facility. The amendment also sets out the following criteria to determine whether a clean energy project (such as a ROR project) should be considered a "facility":

- The project must be entirely located on provincial Crown land;
- The project has obtained an electricity purchase agreement (EPA) with BC Hydro, Powerex, or FortisBC; and
- The project has obtained necessary federal and provincial authorizations.

Some local governments felt the amendments fettered their powers. However, the amendment merely clarified an old law and did not remove anything. Local governments retain the ability to participate in project reviews and provide input to regulatory processes associated with project development.

The Ministry of Energy and Mines produced a mini-guide entitled, "Opportunities for Local Government and the Public Participation in Provincial Regulatory Processes for Independent Power Producers' Projects". This document details the regulatory processes and requirements

of the provincial *Water Act, Land Act* and *Environmental Assessment Act.* The mini-guide is available at http://www.empr.gov.bc.ca/EAED/AEPB/AEPS/Documents/MiniGuide.pdf.

Comments on Cumulative Impacts

The EAO defines cumulative effects as likely impacts from a reviewable project, combined with impacts from prior development, existing activities and reasonably foreseeable future development. Before April 2010, the provincial *Environmental Assessment Act* did not expressly mention cumulative effects; the EAO did, however, assess cumulative effects as an integral part of the assessment process. In 2010, the *Clean Energy Act* included a consequential amendment to the *Environmental Assessment Act* that gives the Executive Director of the EAO the discretion to require that cumulative environmental effects be included as one of the effects considered in an EA. This codified EAO's previous practice. The EAO considers the potential for cumulative environmental, social, economic, health and heritage effects in an EA.

The EAO examines cumulative effects as part of its EAs through: comprehensive baselines which set out the current conditions and thereby factor in effects of prior development; consideration of potential overlapping impacts that may be occurring due to other developments, even if not directly related to the proposed project; and, consideration of future developments that are reasonably foreseeable and sufficiently certain to proceed.

The EAO conducts these assessments within the context of existing legislation and planning processes, including: approved land use plans that designate the most appropriate activities on the land base; environmental management planning; air shed management planning; and, watershed management planning.

Cumulative environmental effects assessment is also a requirement under the *Canadian Environmental Assessment Act*. Most, if not all, ROR projects in British Columbia, including those that are below the provincial EA threshold of 50 MW, have the potential to affect fish and fish habitat, and are therefore subject to the *Canadian Environmental Assessment Act* and its requirement for a cumulative environmental effects assessment.

In 2010, British Columbia initiated an interagency project called the cumulative effects assessment and management framework (CEAMF) to develop a consistent approach to the consideration of cumulative effects in natural resource decision-making. This team is working to define valued components, develop a cumulative effects assessment framework and decision support tools for natural resource ministries. The CEAMF has initiated three demonstration projects across the Province to provide "learning labs" for the development of a framework and testing of tools to support cumulative effects assessment. First Nations and key stakeholders identified with the demonstration project areas have been invited to participate in a first phase of engagement on the vision for a cumulative effects framework used for projects that are reviewable under the provincial *Environmental Assessment Act*.

.../5

Comments on British Columbia Environmental Assessment Thresholds for Review

The Reviewable Projects Regulation (RPR) and the British Columbia *Environmental Assessment Act* were enacted in 1995. The RPR lays out the triggers at which large development projects are required to undergo EA. Under the 1995 RPR, the trigger for hydroelectric projects was 20 MW; in 1998, the trigger for hydroelectric projects was changed to 50 MW.

The 1998 amendment was the result of an independent evaluation of the EA process that began in 1995 when the initial *Environmental Assessment Act* and RPR were put in place. The evaluation determined that the criteria for triggering reviewable projects did not always reflect the projects' potential environmental impact. The regulation change was meant to ensure that the EA process focussed on assessing major projects with the potential for significant adverse impacts. This amendment redirected smaller development proposals to be reviewed through authorization and permitting processes, rather than extensive environmental assessment. In 2002/03, the 50 MW trigger was reviewed by a broad group of environmental non-governmental groups, industry and First Nations. The review concluded the current threshold of 50 MW was appropriate for hydroelectric projects.

It is important to note that projects that do not meet the review threshold under the revised RPR can still be designated as reviewable under section 6 of the *Environmental Assessment Act* if the Minister of Environment is satisfied that the project may have a significant adverse impact and that the designation is in the public interest. In addition, proponents with projects under the EA threshold can, and do, opt into the Province's EA process.

Comments on the Standing Offer Program

One participant suggested that projects that make the Standing Offer Program (SOP) threshold just have to pay their application fee and they are accepted, with no oversight. This is not true.

The SOP is a BC Hydro electricity acquisition program for projects 15 MW or less. Projects are eligible to receive an EPA from BC Hydro provided they can deliver power for less than the price threshold and have all of their land and water permits in place prior to their application. In other words, federal and provincial regulatory review and approval are prerequisites for acceptance under the SOP.

Comments on Provincial Energy Planning

Participants suggested that there is no provincial process to determine whether clean energy projects are needed. This claim is inaccurate.

The 2010 *Clean Energy Act* directs BC Hydro to develop an Integrated Resource Plan (IRP) for review by the Government no later than December 2012. A revised 20-year

.../6

British Columbia load forecast will be part of the IRP. This load forecast will inform BC Hydro's future power procurement and demand-side management strategies. BC Hydro's IRP process provides opportunities for public, private, non-governmental and First Nations feedback and input and I understand that webinar participants have been active in the process.

Comments on First Nations Consultation

All ROR projects in British Columbia are subject to First Nations consultation and often result in business partnerships with First Nations. Federal and provincial EA processes, as well as federal and provincial decision-makers on operational permitting, are constitutionally required to ensure the First Nations are consulted and, if appropriate, accommodated for potential impacts on aboriginal or treaty rights, whether those aboriginal rights have been established in a court process or simply claimed by First Nations. Every federal or provincial regulatory decision (e.g. water licensing, land use authorizations, road building, etc.) is subject to a legal duty to consult and, if appropriate, accommodate potential impacts on these aboriginal interests.

In addition to the regulatory consultation and accommodation obligations, the Province has now established, under the *Clean Energy Act*, a First Nations Clean Energy Business Fund, which enables clean energy project revenue-sharing with First Nations. The Fund is intended to facilitate First Nations involvement in the clean energy sector. It allows for 50 % of provincial water licence and land authorization revenues from ROR projects to be shared with First Nations. Capacity funding and funding to assist First Nations in acquiring equity positions in ROR projects are also available. More information can be obtained on the Fund at the following site http://www.gov.bc.ca/arr/economic/fncebf.html.

Finally, in addition to the provincial financial benefits available to First Nations, many ROR proponents in British Columbia pursue private financial partnerships or revenue sharing with First Nations through Impact Benefit Agreements. These agreements often include aboriginal employment, contracting, monitoring and equity positions for First Nations. For example, the Kokish ROR project, which was mentioned during the webinar and has recently received an EA Certificate, has the 'Namgis First Nation as a limited liability partner.

Comments on Environmental Standards in British Columbia

One participant questioned whether British Columbia's environmental standards are comparable to California's. British Columbia has world-class environmental standards and a proven track record of environmental management. A recent project undertaken under the auspices of the Pacific Coast Collaborative confirms that all four participating jurisdictions (British Columbia, Washington, Oregon, and California) have robust practices for low carbon energy development. Further, the CEC certified the Dokie Wind Project as renewable based largely on British Columbia's strong EA and permitting processes.

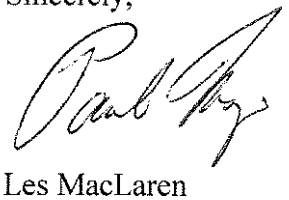
.../7

The Province maintains that ROR project reviews are comprehensive, timely, transparent and provide meaningful participation for all relevant stakeholders. To date, the Province has submitted the following information to support its position:

- a copy of a presentation and a sample of an EA Certificate that Mr. Robin Junger, previously the Deputy Minister of Energy, gave to the California Select Committee on Renewable Energy.
- a copy of the Independent Power Project (IPP) Guidebook, provided by the Clean Energy Projects Office. This document outlines the processes that a typical IPP would have to follow in developing an electricity project in British Columbia.
- a copy of a presentation from the EAO to the California Clean Energy and Environment Committee on Renewable Energy last June.
- Other documents from the British Columbia EAO, including an overview of the EA process; a 'user guide' describing the process in detail; and a 'Fairness and Service Code' developed to help project proponents, First Nations and the public understand what they can expect during a provincial EA. Further information on this process can be found at www.eao.gov.bc.ca.

I look forward to discussing British Columbia's standards for ROR power with you in the future. Thank you for your consideration.

Sincerely,



for Les MacLaren
Assistant Deputy Minister
Electricity and Alternative Energy Division
British Columbia Ministry of Energy and Mines